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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SHADEESHA BROWN and  
GABRIEL PEREZ,

Plaintiffs,

v.

THE CITY OF NEW YORK, BRIAN McALEAR,  
KEITH HOCKADAY, FREDERICO MARTINEZ,  
JOAQUIN MORALES, ROBERT DOWNES,  
THOMAS ALBANO, GERARD FLOOD,  
WILLIAM HART, TIMOTHY MURPHY,  
KENYATTA ROUSE, and THOMAS LONGA,

Defendants.

11 CV 1068 (AJN)

**Statement Of Undisputed Facts  
Pursuant To Local Rule 56.1**

Defendants City of New York, Brian McAlear, Keith Hockaday, Frederico Martinez, Joaquin Morales, Robert Downes, Thomas Albano, Gerard Flood, William Hart, Thomas Murphy,<sup>1</sup> Kenyatta Rouse, and Thomas Longa (together “Defendants”), by their attorneys, Linklaters, LLP, in accordance with Rule 56.1 of the Local Civil Rules for the Southern District of New York and in support of their motion for summary judgment submit the following statement of material facts as to which there is no genuine issue to be tried.

<sup>1</sup> Defendant’s name is incorrectly stated in the Complaint. Defendant’s name is Thomas Murphy, not Timothy Murphy.

1. On August 5, 2010, the Supreme Court of the State of New York, County of New York, issued Search Warrant 10-588. Bloor Decl.,<sup>2</sup> Exhibit (“Ex.”) A at NYC097.

2. The warrant authorized the search of apartment 5B of 1368 Webster Avenue in the Bronx, New York (“Apartment 5B”) for weapons, drugs and drug paraphernalia. *Id.*

3. The search warrant was executed the morning of August 6, 2010. *Id.*, Ex. B at 51: 11 – 13; Ex. D at NYC28; Ex. Z at NYC106.

4. The apprehension team, or “A-team,” of the Emergency Services Unit (the “ESU”) of the NYPD entered Apartment 5B first. *Id.*, Ex. C at 52: 5-7, 53: 1-25; 54: 1-23.

5. The team consisted of Defendant Officers Murphy, Downes, Rouse, Albano, Flood, Hart, and Longa (the “Entry Team”). *Id.*, Ex. D at NYC28.

6. The officers assigned to conduct the search of Apartment 5B (the “Search Team”) entered Apartment 5B after the Entry Team left. *Id.*, Ex. G at 76: 22-25, 77: 2-9; Ex. H at 28: 23-25, 29: 2-7.

7. The Search Team consisted of Defendant Officers Hockaday, McAlear, and Morales. *Id.*, Ex. D at NYC28; Ex. Y at NYC098.

8. On the morning of August 6, 2010, Karen Rodriguez, Gabriel Perez, and Shadeesha Brown were in Apartment 5B. *Id.*, Ex. B at 57: 15-25; 58: 2; Ex. C at 58: 5-10.

9. Mr. Perez and Ms. Brown (“Plaintiffs”) were staying at the apartment the night of August 5, 2010, into the morning of August 6, 2010. *Id.*, Ex. K at 28: 6- 13; Ex. L at 24: 11-17.

10. Plaintiffs Perez and Brown were asleep in one of the rear bedrooms when the Entry Team went into the apartment. *Id.*, Ex. L at 27: 9-14, 22-25.

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<sup>2</sup> References to “Bloor Decl.” are to the Declaration of Martin S. Bloor, dated July 5, 2012, and submitted in connection with the Memorandum of Law in Support of Defendants’ Motion for Summary Judgment.

11. Ms. Brown was placed in handcuffs during the search of Apartment 5B. *Id.*, Ex. L 36: 1-11, 44: 19-23.

12. No force was used when placing Ms. Brown in handcuffs. *Id.*

13. Mr. Perez was placed in handcuffs during the entry and search of Apartment 5B. *Id.*, Ex. K at 42: 24 – 25, 43: 1-7.

14. One of the Defendant Officers placed his knee in Mr. Perez's back when he placed Mr. Perez in handcuffs. *Id.*, Ex. K at 41: 2-6, 44: 16-21.

15. Mr. Perez did not suffer any harm as a result of a knee being put against his back to handcuff him. *Id.*, Ex. K at 79: 4-6.

16. During the search of Apartment 5B, the Search Team found and took possession of fifty-nine glassines of heroin, nineteen baggies of crack/cocaine, forty-two baggies of marijuana, narcotics paraphernalia and one .9 millimeter round of ammunition. *Id.*, Ex. B at 79: 5 -25, 80, 87: 5 – 19; Ex. Z at NYC106.

17. Following the search, all three occupants were taken to the PSA 7 precinct. *Id.*, Ex. B at 74: 8-25, 75, 76: 1-10; Ex. C at 92-95; Ex. K at 12: 4-5.

18. Ms. Rodriguez was arrested and charged with criminal possession of a controlled substance. *Id.*, Ex. C at 34:9-13; NYC 106.

19. Plaintiffs Perez and Brown were released without being charged with any violation. *Id.*, Ex. C at 34:9-13; Ex. L at 52: 11-13.

20. The City had training in place in order to educate its officers as to how to execute a search warrant in such a way as to ensure the safety of everyone involved. *Id.*, Ex. V at 24: 21-25, 25-27, 28: 1-10; Ex. C at 105: 6-20; Ex. E at 19: 18-25, 20: 1-12; Ex. J at 24-27, 28: 4-10; Ex. G at 22: 16-22, 23: 2-15; Ex. W at 18: 25, 19: 1-20.

21. The Entry Team was supervised by Defendant Flood in connection with their entry into Apartment 5B on August 6, 2010. *Id.*, Ex. J at 33: 8-25, 53: 5-25, 54: 1-4; Ex. D at NYC28.

22. The Search Team was supervised by Defendant Morales in connection with their search of Apartment 5B on August 6, 2010. *Id.*, Ex. C at 43: 23-25, 44: 1-4; Ex. B at 36: 15-23, 77: 3 -11; Ex. D at NYC28.

23. The record establishes that previous complaints filed with the CCRB against Defendant Officers were investigated and, with one minor exception, were found to be unsubstantiated. The one substantiated complaint concerned a parking permit. *Id.*, Ex. X at NYC 123- 165.

24. Defendant Martinez was on vacation on August 6, 2010 and therefore did not participate in the entry or search of Apartment 5B on August 6, 2010. *Id.*, Ex. B at 21:1-6; Ex. BB at NYC36 – 37.

25. Defendant Longa was assigned to “Rear Security” for the search of Apartment 5B, meaning that it was his express duty not to enter the apartment. *Id.*, I at 44: 12-20.

Dated: New York, New York  
July 5, 2012

Respectfully submitted,

Linklaters LLP

By: /s/ Martin S. Bloor

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